

closely with the Congress to strengthen measures to combat terrorism. Sincerely,  
**W. Tapley BENNETT, Jr.**  
*Assistant Secretary,  
 Legislative and Intergovernmental Affairs.*

U.S. SENATE,  
 Washington, DC, February 25, 1985.  
**Hon. GEORGE P. Schultz, Secretary of State,  
 Department of State, Washington, DC.**

DEAR SECRETARY SHULTZ: A February 22 New York Times\* article quoting a Paris magazine interview with Abu Nidal, the nefarious Palestinian terrorist, has dramatically reinforced my grave concerns about the threat of state-sponsored terrorism and its impact on Middle East peace.

Nidal, who was reported to have died last November, was quoted as saying that he planned new terrorist attacks against Americans this year and that his organization, the Fatah Revolutionary Council, has "decided to execute King Hussein of Jordan."

During my most recent visit to that region last August, I met with leaders of a number of key Arab nations. Including King Hussein, and the pervasive fear of assassination that haunted these men was palpable. It is a fear I could well understand, having met with Bashir Gemayel in Lebanon days before he was assassinated. All other efforts at peace in the Middle East are futile if individuals like Nidal and the nations that harbor them go unpunished.

The Nidal saga demands an immediate response from all civilized nations, spearheaded by the U.S. It is a very serious matter if this notorious criminal has in fact convinced the West of his death while continuing to plot his heinous crimes, many, he boasts, aimed at Americans. Perhaps most troubling is that he can state his violent intentions so confident that he can carry them out with impunity.

I intend to request hearings to consider stepped-up intelligence and operational cooperation with our allies to pursue and prosecute terrorists worldwide. In addition, I believe we should examine our own counterterrorism intelligence capabilities and efforts, to ensure that we are doing all we can unilaterally.

I have already questioned the CIA on whether the U.S. knows who is responsible for the bombings of American facilities that claimed so many lives in Lebanon and who is behind the Kuwaiti highjacking during which two Americans were murdered and where these perpetrators may be found today. It is imperative that we promptly assess what we do know, and promptly discover what we do not.

Syria and Libya, both of which are implicated in the Nidal story as places of refuge for this terrorist, are already listed by the State Department, along with Bulgaria, Iran, and South Yemen, as states subject to trade restrictions because of their ties to terrorists. Yet last year we exported \$104 million worth of goods to Syria and an even higher level to Libya. We should abandon the fallacy of trade "restrictions" and cease all trade with these nations, simultaneously pressing our allies to join us in a unified international boycott of states sponsoring terrorism.

At the same time, the President should call for an international meeting to consider a cooperative strategy for treating terrorists as the criminals they are. Including establishing terrorism as a crime against the law of nations punishable by any country that captures the terrorist, the possibility of establishing an International criminal tribunal along the lines of the Military Tribunal at Nuremberg following World War II, and

amending the Vienna Convention to make it clear that "diplomats" who murder—such as those involved in the Libyan Shootout in London last year— forfeit any claim to diplomatic immunity. I have proposed legislation to achieve these objectives.

There is a growing evidence that terrorists are uniting in their violence. Western Democracies must unite in response. I would like to resume the discussions of these matters that we started last fall. Sincerely,

ARLEN SPECTER.

By Mr. BOSCHWITZ: S. 872. A bill entitled the "Women's Small Business Ownership Act of 1985"; to the Committee on Small Business.

#### WOMEN'S SMALL BUSINESS OWNERSHIP ACT

• Mr. BOSCHWITZ. Mr. President, I am introducing a bill to establish a National Commission on Women's Small Business Ownership. The purpose of the Commission will be to study ways to improve the business climate for women business owners. The Commission would be appointed for 2 years at a cost of \$2 million, report its findings, and then expire. Similar legislation was introduced in the House by Congressman MOODY during the last session of Congress, hearings were held and the bill was reported out of the Small Business Committee.

You hear and read a lot about the difficulties encountered by women business owners, but there is very little statistical data available. The most recent statistics available are Census Bureau data from 1977 to 1980. That data showed that over that period the average net "income of female-operated sole proprietorships continued to stay at about 31 percent of the average for male-operated sole proprietorships. The number of businesses owned by women increased 32 percent from 1977 to 1980, while business owned by men only increased 11 percent.

This Commission will help fill the void in statistics since 1980 by not only collecting available data but also reviewing data collecting procedures and identifying gaps and discrepancies. The Commission will also review all existing Federal initiatives relating to women-owned small businesses and Federal roles in aiding and promoting women-owned small businesses. This bill directs the Commission to focus on the special problems of socially and economically disadvantaged women in owning small businesses. Finally, the Commission would be required to make recommendations based upon its findings. The recommendations should include private sector and Federal initiatives to assist women in small business ownership.

President Reagan has taken some important steps to help promote women entrepreneurs and to improve the business climate for women. He reinstituted the Interagency Committee on Women's Business Enterprise to coordinate the efforts of the various Federal agencies in assisting women

business owners. The President established a Presidential Advisory Committee to advise the President and the Small Business Administration concerning the status of women-owned businesses. Probably the most innovative step taken by President Reagan was to initiate a series of conferences for women entrepreneurs to provide business skills training for women business owners. This Commission would complement the initiatives taken by President Reagan by serving as a review body of all efforts on behalf of women business owners.

As one of the few businessmen in Congress, and one of very few to have started a business from scratch, I know all too well the difficulties in owning a business. To succeed in business, particularly to start a business, "I had to borrow from banks, approach new suppliers, convince landlords to rent me buildings, fight with government at various levels, and overcome many other obstacles. For women, accomplishing all of those things would have been harder. For a black, Hispanic, or Hmong it would have been harder as well, and if I had been a woman and a member of one of these minority groups it would have been harder still. One of the basics of the free enterprise system is access. All should have equal access to our economic system. We are not yet close to achieving economic parity in the marketplace and the pace at which we move is not rapid enough, especially considering the number of people affected. So barriers must be broken down, barriers—economic and others—that deny people equal access to treatment in our society.

The Commission established by this bill will help to identify those barriers and help us, both the Government and private sector, to break down those barriers.\*

By Mr. CHAFEE (for himself,  
 Mr. STAFFORD, and  
 Mr.  
 INOUE):

S. 873. A bill to amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life; to the Committee on Finance.

#### community and FAMILY LIVING AMENDMENTS

• Mr. CHAFEE. Mr. President, in his State of the Union Address, President Reagan said:

This Government will meet its responsibility to help those in need. But policies that increase dependency, break up families, and destroy self-respect are not progressive. They are reactionary . . . let us resolve that we will stop spreading dependency and start spreading opportunity; that we will stop spreading bondage and start spreading freedom . . . There must be no forgotten Americans.

Nowhere are these words more appropriate than when they are applied to citizens who have mental and/or physical disabilities.

The legislation I am introducing today stands for all of the ideals held dear by the citizens of this country. It honors the family by giving Americans the support they need to keep their families intact. It rediscovers the values of freedom, meaningful work, and the neighborhood by giving the developmentally disabled what they have long been denied—an opportunity to participate in the pursuit of these ideals.

Mr. President, 2 years ago, I introduced a bill, S. 2053, the Community and Family Living Amendments of 1983. Today I am offering a substantially revised version of that legislation. I ask that a summary of the bill, as well as the bill itself, be printed in full in the RECORD immediately following my statement.

The legislation I introduced during the last session of Congress, S. 2053, would have redirected all Medicaid funding from larger facilities for the developmentally disabled to community-based services such as group homes and in-home assistance, like respite care.

That bill was extremely controversial. In my office alone, we received almost 10,000 letters on the issue, many of which suggested revisions. Two hearings were held in the Finance Committee on the legislation. We heard from a variety of individuals representing parents, program experts, State administrators, institutions workers and directors, group home directors, and the disabled themselves.

Through these hearings and the scores of letters and meetings with individuals and groups, I found that there were five major provisions in S. 2053 which many individuals and organizations were concerned about: First, the total phaseout of Medicaid dollars from facilities with more than 15 beds; second, the 10-year time period over which that phaseout would take place; third, the size of community living facilities; fourth, the broad definition of the eligible population; and fifth, that there was no provision to address the needs of the so-called residual population; that is, those individuals who some contend could never be served in any facility other than a large one.

When I introduced S. 2053, I stressed that it was not carved in stone. It was simply a first step in the discussion of what the best system of care for the developmentally disabled should look like. I believe that the bill I am introducing today addresses many of the major concerns raised last year, with three new provisions.

First, the definition of a severely disabled individual in the original legislation was too broad and difficult to work with. Consequently, I have redefined the eligibility definition as those severely disabled individuals who have "a disability, as defined in section 223(d) of the Social Security Act, which was manifest before the age of 35. The definition will also include

children or youths who are under the age of 31 at the time the bill is enacted, who have a primary diagnosis of mental illness. This definition substantially narrows the eligible population.

Second, the concern that 10 years was not an adequate period of time for States to develop a quality community-based service system seemed to be reasonable. Consequently, I have changed that provision to require that the phasedown, as described below, be completed by the year 2000.

Third, I recognize the concerns of some individuals that a complete phaseout of Medicaid dollars from large facilities may in fact be too extreme an idea for many to accept. There are concerns that some service systems are not ready to support the most severely disabled people in smaller facilities in the community and that there may be a need to rely on some larger facilities. Having seen even the most profoundly disabled and medically fragile individuals thriving in small community-based settings, I do not agree that these large facilities are necessary; however, I am willing to recognize the concerns of others. Consequently, I have expanded the grandfathering clause to include facilities with up to 15 beds and cluster homes—three homes which would meet the definition of a community group home but for the fact that they are adjacent to each other. I have also added a provision which would allow the States to retain some Medicaid dollars to spend in larger facilities.

This new provision would work in the following manner: Each State would choose a base year for the purposes of this provision. Fifteen percent of the funds used by the State during this base year for the care of individuals with severe disabilities as defined in the bill would be available to the State for services which do not meet the definition of community-based services outlined in the bill. For example: State X chooses 1980 as its base year. In that year, it spent \$1 million through the Medicaid Program to provide services to severely disabled individuals in facilities with over 15 beds. State X could spend up to \$150,000—15 percent of \$1 million—each year for services to severely disabled individuals provided in facilities which do not meet the definition of a community living facility or which are not provided in a natural, adoptive or foster care family home. This dollar amount would be adjusted annually for inflation.

For each individual currently being served in a facility which does not qualify as a community or family living facility, the Federal matching rate would be reduced by 4 percent per year for no more than 10 years. For example, State X has a 50-50 matching rate, the percentage of the matching rate would decrease by no more than 40 percent over 10 years. The State would then receive a 30-percent match for that individual in a facility

which is not a community or family living facility.

One other major change is included in the new bill which merits special mention. Many individuals and groups who wrote to or met with me made the point that individual and family support services are the most critical need for individuals trying to live in the community independently and for families who wish to care for their severely disabled relatives at home. I have therefore added this service as one of the three services which are required to be offered by the State in order to receive Medicaid dollars. Without this assistance, many severely disabled individuals are denied the opportunity to live in the community and are forced to live away from their families in nursing homes or other congregate housing situations which are more expensive. The definition of "individual and family support services" in the legislation is very broad. During the hearing process, a clearer definition will evolve.

Mr. President, legislation of this nature is essential. A policy change at the Federal level is long overdue. Federal Medicaid funds flow primarily toward large facilities. In fiscal year 1984, the total amount of State and Federal expenditures for this population amounted to \$7.3 billion. Of that amount, \$4.3 billion was spent in facilities of over 15 beds. The reason for this has more to do with what Medicaid will pay for than what system of care is best.

Since 1977, less than 20 percent of our ICF/MR dollars have gone to support persons with mental retardation/developmental disabilities in the community; the balance has been spent to keep people in institutions. While there is a great deal of interest in supporting people in the community and removing the emphasis on institutional care, there is much variation in the rate at which various States approach the task. Since 1977, more than one-half of the residents of large facilities in Vermont, Michigan, Ohio, and Nebraska have returned to the community. In other States, however, less than 10 percent of this population has returned to society. Three States, Louisiana, Tennessee, and Mississippi, have actually increased the number of persons living in institutions in the last 7 years.

This legislation is an attempt to encourage all States to move in the direction of allowing individuals with developmental disabilities to live in the community, either at home, on their own, or in a group home. The legislation makes this possible by providing resources to the States to offer a better level of care than that available in most larger facilities. In addition, I expect that for most people, this system of care will be better and less expensive.

In fiscal year 1984, there were 110,000 developmentally disabled indi-

viduals living in Institutions for the mentally retarded or developmentally disabled. These Institutional placements cost a total of \$4.3 billion. On average of \$40,000 per person per year. There are entire families living on much less than that in this country today. It stands to reason that with that type of expenditure, great and innovative things can be done in the community. Solid community-based services can be provided at a much lower cost and can be tailored to meet individual needs.

Last year, this Congress spent many hours debating the "Baby Doe" issue. Every year since the Roe versus Wade decision by the Supreme Court, we have debated the issue of abortion. Yet these debates seem to go no further than birth. What happens to the individual after birth seems to be of little or no concern to many. This bill focuses attention on the quality of life of a severely disabled individual during his or her lifetime. This discussion is long overdue.

Since he became chairman of the Subcommittee on the Handicapped, my colleague from Connecticut, Senator WEICKER, has consistently worked to improve the current system of care for mentally retarded and developmentally disabled individuals. He has held hearing after hearing on the issue, uncovering nationwide abuse and neglect. Over the past 3 days, his subcommittee has heard another round of testimony on this issue. Much of the testimony from those hearings describing abuse, neglect, and inappropriate programming is appalling. I think that the record of these hearings will support my belief that the Medicaid program as it applies to severely disabled individuals must be reformed. The legislation I am offering today is one way of accomplishing such a reform.

Mr. President, I would again like to make clear that the provisions in my legislation are open to discussion. I do not intend to attempt to push this legislation through without further discussion and revision. Although I have tried to address most of the concerns which were raised last year, I am certain that others will be raised as the legislation is examined and analyzed. As always, I welcome such scrutiny. The goal of this legislation is to provide a mechanism for the development of the most appropriate and effective system of long-term care for those in our society who are severely disabled. I desire any input which will further that goal.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

#### SHORT SUMMARY: COMMUNITY AND FAMILY Living Amendments of 1985

##### Eligibility: Definition of Severely Disabled Individual

The eligible population is defined as those individuals who have a disability as defined in section 323 of the Social Security Act which was manifest before the age of 35. Individuals who suffer primarily from a mental disease are eligible only if that condition was manifest before the age of 21.

As with current Medicaid law, states have the discretion to narrow this definition of eligibility. **Definition of A COMMUNITY LIVING FACILITY**

##### And Family Home

A family home is defined as a residence maintained by an individual or natural, adoptive or foster family in which one or more severely disabled individuals are living who receive medical assistance which includes payment for some of the services outlined in section 1919(a).

A community living facility is defined as a single household other than a family home which: 1) provides living arrangements and services to one or more severely disabled individuals; 2) has a number of beds no greater than three times the average family size in the area in which it is located; 3) is located in an area which is primarily populated by individuals other than those who are severely disabled; 4) meets standards for program appropriateness, safety and sanitation as are established by the Secretary of Health and Human Services and those applicable under state law; 5) is staffed by individuals who are trained or retrained in accordance with the implementation agreement to be filed with the Secretary of Health and Human Services by each State.

##### SERVICES ELIGIBLE FOR PAYMENT

The list of services which the state may provide to severely disabled individuals and receive payment under the Medicaid program is attached. In addition to these the legislation allows the states an option to provide these services\* to any severely disabled individual or the family of such an individual provided that more than 5% of the individual's or family's Adjusted Gross Income is spent on the provision of the services outlined.

There are three mandated services, that is service\* which the state must provide in order to receive Medicaid dollars. These services are: (1) protective intervention; (2) case management; and (3) Individual/Family Support services (which would include non-medical personal assistance and respite care).

##### PHASE DOWN

Medicaid dollars would be available for use by the state for the services outlined above if they are provided to an individual living in his or her own home. In a natural, adoptive or foster home, in a community living facility or in facilities which fall within the grandfathering clause.

The legislation does not require a complete phase out of federal Medicaid dollars from facilities which do not meet the above definitions. Instead it would require a phase down of these funds. The phase down would be complete by the year 2000 and would work in the following manner. Each state will choose a base year for the purpose of this provision, fifteen percent of the funds expended by the Medicaid program in that state during that year for individuals with severe disabilities would be available to the state in each year after 2000 for services which do not meet the definition of community based services as defined in the bill. This amount would be adjusted for inflation annually. For example: State X chooses

1975 as its base year. In that year it spent one million dollars to provide services to severely disabled individuals in facilities with over 15 beds. Beginning in 2000 State X could spend no more than 150 thousand dollars (15% of one million) for services provided to severely disabled individuals in facilities which do not fall within the requirements outlined above.

For services provided in facilities which are not community living facilities, a natural, adoptive or foster home or which are not grandfathered, the federal Medicaid match would be reduced by 4% per year for no more than 10 years.

##### GRANDFATHERED FACILITIES

There are two types of facilities which do not meet the definition of a Community Living Facility or a Family Home which are grandfathered in by the legislation (i.e. are not subject to payment restrictions): 1) any facility in operation before the date of enactment which has less than 15 beds; and 2) any "cluster home" facility—any group of three homes which would otherwise meet the definition of a community living facility except for the fact that they are adjacent to one another.

##### IMPLEMENTATION AGREEMENT

Within two years after the legislation is enacted each state must develop an implementation agreement which must be approved by the Secretary of Health and Human Resources. The implementation agreement must outline how the state will comply with the provisions outlined in the bill. The agreement forces the states to plan in advance of taking any action.

##### STATE MAINTENANCE OF EFFORT CLAUSE

States which are currently providing (with state dollars only) services which would be eligible for federal Medicaid matching funds under the legislation would be required to maintain these services with state dollars.

##### STATEWIDE WAIVER PROVISION

States would be allowed to waive the Medicaid requirement of statewideness for a particular service for two years at any time it wishes to develop such a new service.

##### MONITORING AND SAFEGUARDS

Each community living facility must be licensed by the state or accredited.

Any program or facility receiving Medicaid funding must meet the standards set forth by the Secretary of Health and Human Services.

##### Protective intervention services.

The implementation agreement development by the state must outline plans for the development of community based services, safeguards at the state level, training of staff and other specific requirements as outlined in the legislation. The public must have adequate opportunity to comment on this agreement and it must be approved by the Secretary. The states must comply with the implementation agreement.

Individuals and families may participate in the development of the individual written plan and may ask for a hearing if they do not agree with the needs outlined in that plan. Such a hearing must be granted.

Before any individual is transferred there is an opportunity for that individual or his family or guardian to object and request a hearing. Such a hearing must be granted.

A private right of action is available if the state does not comply with its implementation agreement.

##### By Mr. CHAFEE:

S. 874. A bill to amend the Internal Revenue Code of 1954 by increasing the Federal excise tax on cigarettes by

## SHORT SUMMARY

### COMMUNITY AND FAMILY LIVING AMENDMENTS OF 1985

APRIL 3, 1985

#### ELIGIBILITY: DEFINITION OF SEVERELY DISABLED INDIVIDUAL

The eligible population is defined as those individuals who have a disability as defined in section 223 of the Social Security Act which was manifest before the age of 35. Individuals who suffer primarily from a mental disease are eligible only if that condition was manifest before the age of 21.

As with current Medicaid law, states have the discretion to narrow this definition of eligibility.

#### DEFINITION OF A COMMUNITY LIVING FACILITY AND FAMILY HOME

A family home is defined as a residence maintained by an individual or natural, adoptive or foster family in which one or more severely disabled individuals are living who receive medical assistance which includes payment for some of the services outlined in section 1919(a) .

A community living facility is defined as a single-household other than a family home which: 1) provides living arrangements and services to one or more severely disabled individuals; 2) has a number of beds no greater than three times the average family size in the area in which it is located; 3) is located in an area which is primarily populated by individuals other than those who are severely disabled; 4) meets standards for program appropriateness, safety and sanitation as are established by the Secretary of Health and Human Services and those applicable under state law; 5) is staffed by individuals who are trained or retrained in accordance with the implementation agreement to be filed with the Secretary of Health and Human Services by each State.

#### SERVICES ELIGIBLE FOR PAYMENT

The list of services which the state may provide to severely disabled individuals and receive payment under the Medicaid program is attached. In addition to these the legislation allows the states an option to provide these services to any severely disabled individual or the family of such an individual provided that more than 5% of the individual's or family's Adjusted Gross Income is spent on the provision of the services outlined.

There are three mandated services, that is services which the state must provide in order receive Medicaid dollars. These services are: 1) protective intervention; 2) case management; and 3)

Individual/Family Support services (which would include non-medical personal assistance and respite care).

#### PHASE DOWN

Medicaid dollars would be available for use by the state for the services outlined above if they are provided to an individual living in his or her own home, in a natural, adoptive or foster home, in a community living facility or in facilities which fall within the grandfathering clause.

The legislation does not require a complete phase out of federal Medicaid dollars from facilities which do not meet the above definitions. Instead it would require a phase down of these funds. The phase down would be complete by the year 2000 and would work in the following manner. Each state will chose a base year for the purpose of this provision, fifteen percent of the funds expended by the Medicaid program in that state during that year for individuals with severe disabilities would be available to the state in each year after 2000 for services which do not meet the definition of community based services as defined in the bill. This amount would be adjusted for inflation annually. FOR EXAMPLE: State X chooses 1975 as its base year. In that year it spent one million dollars to provide services to severely disabled individuals in facilities with over 15 beds. Beginning in 2000 State X could spend no more than 150 thousand dollars (15% of one million) for services provided to severely disabled individuals in facilities which do not fall within the requirements outlined above.

For services provided in facilities which are not community living facilities, a natural, adoptive or foster home or which are not grandfathered, the federal Medicaid match would be reduced by 4% per year for no more than 10 years.

#### GRANDFATHERED FACILITIES

There are two types of facilities which do not meet the definition of a Community Living Facility or a Family Home which are grandfathered in by the legislation (i.e. are not subject to payment restrictions): 1) any facility in operation before the date of enactment which has less than 15 beds; and 2) any "cluster home" facility- any group of three homes which would otherwise meet the definition of a community living facility except for the fact that they are adjacent to one another.

#### IMPLEMENTATION AGREEMENT

Within two years after the legislation is enacted each state must develop an implementation agreement which must be approved by the Secretary of Health and Human Resources. The implementation agreement must outline how the state will comply with the provisions outlined in the bill. The agreement forces the states to plan in advance of taking any action.

STATE MAINTAINENCE OF EFFORT CLAUSE

States which are currently providing (with state dollars only) services which would be eligible for federal Medicaid matching funds under the legislation would be required to maintain these services with state dollars.

STATEWIDE WAIVER PROVISION

States would be allowed to waive the Medicaid requirement of statewideness for a particular service for two years at any time it wishes to develop such a new service.

MONITORING AND SAFEGUARDS

- each community living facility must be licensed by the state or accredited
- any program or facility receiving Medicaid funding must meet the standards set forth by the Secretary of Health and Human Services
- protective intervention services
- the implementation agreement developed by the state must outline plans for the development of community based services, safeguards at the state level, training of staff and other specific requirements as outlined in the legislation. The public must have adequate opportunity to comment on this agreement and it must be approved by the Secretary. The states must comply with the implementation agreement.
- individuals and families may participate in the development of the individual written plan and may ask for a hearing if they do not agree with the needs outlined in that plan. Such a hearing must be granted
- before any individual is transferred there is an opportunity for that individual or his family or guardian to object and request a hearing. Such a hearing must be granted
- a private right of action is available if the state does not comply with its implementation agreement.